

Libby Community Advisory Group

Meeting Summary

January 9, 2003

Introductions

Gerald Mueller and members of the Libby Community Advisory Group (CAG) introduced themselves. Gordon Sullivan joined the CAG. A list of the members in attendance is attached below as Appendix 1. Mr. Mueller stated that because of illness, Dan Strausbaugh is not in attendance, and that the author of the Libby Public Health Assessment, ATSDR's Jill Dyken, plans to attend the February CAG meeting.

Agenda

Mr. Mueller reviewed an agenda for this meeting, including the following topics:

- EPA Report
- TAG Report
- Public Comment

EPA Report

Jim Christiansen and Wendy Thomi reported on behalf of EPA on the following subjects.

Residential & Business Cleanups - Jim Christiansen reported that cleanup of two businesses has been completed on time and under the estimated cost. With contractor and oversight and monitoring costs, the total cost of the two cleanups was about \$30,000 each. One additional residential cleanup is underway. Because the cost of the residential and business cleanups appears to be under control, new cleanups will be initiated three at a time. The plan is to complete cleanup of 40 residences by the end of April.

CAG Member Question - When you encapsulate and clean a home, do you monitor air quality?

Answer - Yes. Each house is different so not all are completely encapsulated. Sometimes only the attic is encapsulated, and sometimes the whole house is. For each cleanup, we monitor the background (i.e. pre-cleanup condition), the living space and attic, and the conditions after the cleanup is completed (called the clearance sample). During the cleanup, some workers also wear personal air quality monitors. Results of the monitoring are given to the home owner.

CAG Member Question - Are the results also made public?

Answer - We do not keep a running record and haven't compiled a report of these results but all sampling results are part of the public record.

CAG Member Question - When will total costs for the two business cleanups be available?

Answer - I just gave them to you.

CAG Member Question - Do you have a standard agreement between EPA and the owner of the home being cleaned? Do you go back and make sure that the homeowner is satisfied?

Answer - We reach agreement with the homeowner on a general cleanup plan before work is started, and then keep the homeowner informed as the work progresses. We strive to be fair and consistent in our approach to the cleanups. Some homeowners have not been completely satisfied, but for the most part, they have been.

CAG Member Question - What have homeowners been dissatisfied about?

Answer - The most common dissatisfaction relates to schedule. We have not always gotten the job done when we said that we would. Otherwise, we have not had a pattern of general dissatisfaction with the cleanups.

CAG Member Question - Is a list of properties that have been cleaned available?

Answer - Yes.

CAG Member Question - Are you still using the same contractor for the cleanups, and will you be changing them so that new people will have to be trained?

Response - EPA will be using the same contractor for the cleanup work through the spring. We have been using the emergency response contractor, Environmental Restoration, to keep the work moving. Environmental Restoration bid competitively to win the emergency response contract for Region 8. However, the emergency response contractor works on a time and materials basis, which is not the most cost effective approach. We plan to change to a bid approach during the spring because doing so should reduce costs.

CAG Member Question - When will you move to bids?

Answer - We will make the transition from time and materials to a bid contract approach in a stepwise fashion. Environmental Restoration will continue doing the cleanups into this coming spring. We plan to issue request for bids for three cleanup contractors during the spring. Some overlap will probably happen between Environmental Restoration and the new bid contractors.

CAG Member Question - How many houses will you clean until the transition occurs?

Answer - As many as possible, assuming costs remain around \$30 thousand. EPA's mission is to clean Libby of asbestos as quickly and as efficiently as possible.

CAG Member Question - Are you interacting with the Technical Advisory Group (TAG) concerning the contracts?

Answer - Yes, we have discussed the contracts with the TAG.

Audience Member Question - Are you buying replacement insulation locally?

Answer - Yes.

CAG Member Question - You have previously told the CAG that EPA would hold Stimson harmless for asbestos cleanup costs. Have you run across anything that would jeopardize this?

Answer - We do not plan to hold the mill owner liable for cleanup costs unless we determine that he has acted either to deny EPA access for the cleanup or to make the contamination worse.

CAG Member Question - If the community or a private party buys the mill from Stimson, would the buyer assume any cleanup liability?

Answer - Under the recently passed Brown Field law, prospective buyers are generally not liable for Superfund cleanup costs.

CAG Member Question - Will Volpe be EPA's prime contractor for the cleanup work?

Answer - EPA cannot issue site specific bids until the cleanup work is understood and predictable. What we are learning this winter will allow us to go to a contract bid basis in the future. EPA does not have the capability to execute and manage large contracts. Therefore, we are using the Volpe Center of the Department of Transportation, another agency of the federal government, as our contracting agent. In some instances Volpe, in turn, will subcontract with a firm such as CDM for some services.

CAG Member Question - Does EPA reimburse the Volpe Center?

Answer - Yes, we have an intergovernmental agreement that provides for reimbursement.

CAG Member Question - Does hiring prime and subcontractors increase the cost of cleanup because of overhead charges?

Answer - Because EPA does not have contract administration capability, we have to pay for this service. However, Volpe's markup is only 4.7%, a very low overhead charge.

CAG Member Question - We have been told previously that under the Superfund law, a responsible party such as W.R. Grace could sue third parties for cost recovery. Could W.R. Grace sue individual property owners for cleanup costs?

Answer - EPA cannot provide protection against third party suits for residents. However, it is my opinion that the likelihood that W.R. Grace would sue individual homeowners is remote. The probability that W.R. Grace would prevail in the suits is even smaller.

Audience Member Comment - We are getting distracted by the cost issue. No matter what it costs, we must have the asbestos contamination of Libby cleaned up. We don't want EPA necessarily to use the cheapest means of cleanup.

EPA Q&A - Wendy Thomi stated that EPA has been publishing weekly a question and answer (Q&A) in local newspapers to answer community questions and to provide information. However, as EPA is moving from the initial investigation and cleanup to a more routine cleanup phase, the overall complexity of cleanup activities has decreased as has the number of issues. Beginning next Monday, EPA will, therefore, change from once a week to once every two weeks for the Q&A. Please call Wendy or the Information Center if something urgent arises. EPA can publish more frequent Q&As if the need arises. Ms. Thomi also reminded people that an EPA attorney with knowledge of bankruptcy law will attend the February CAG meeting.

Superfund Redevelopment Manager - Jim Christiansen introduced Victor Ketellapper. Mr. Ketellapper is the Superfund redevelopment manager for EPA Region 8. He has been visiting with Libby City, County, Economic Development, and Chamber of Commerce officials concerning redevelopment issues. Mr. Ketellapper stated that while EPA is not a redevelopment agency, it can take certain actions such as changing cleanup priorities to facilitate property purchases or easing liability concerns for purchasers. EPA plans to sponsor a workshop this spring to bring other agencies with more redevelopment authority and funding to Libby.

Audience Member Question - If the Stimson mill property is sold, can EPA address liability concerns and move rapidly to cleanup asbestos contamination there?

Answer - First, any new purchasers would not have asbestos-related liability. Second, although we do not have a Stimson cleanup in the present budget, we have been planning and laying the ground work for a cleanup.

County Report

Commissioner Windom stated that over the last two days, the County has had exceptional conversations with EPA and Jim Christiansen, Wendy Thomi, and Victor Ketellapper.

CAG Member Question - What is the status of the County Resolution regarding action against

W.R. Grace?

Answer - After the September 11 terrorist attack, capital dried up. The County could not fund the investigations and legal action under a resolution without outside funding. Lacking funding, we have stopped resolution related actions.

CAG Member Question - Is the County pursuing funding for long-term medical care for asbestos victims?

Answer - The County is in full support of Senator Baucus' proposed funding legislation. We have also been in frequent contact with Congressional staff regarding the "White Lung" legislation. We do not have a separate plan for obtaining long-term medical funding.

Audience Member Question - What is Senator Baucus' proposed legislation?

Answer - Senator Baucus has proposed that the federal government provide \$22 million for long-term asbestos-related health care in Libby. This is not enough money.

CAG Member Comment - A couple of us have rewritten Senator Baucus' legislation and given it to him, but we have not heard back from him.

Public Health Emergency "Declaration"

CAG Member Question - Will the County declare a public health emergency?

Answer by Rita Windom - The Commissioners have talked about this. We have decided that making such a declaration would not help because public health hospitals no longer exist and no funding or other infrastructure is available.

CAG Member Question - Couldn't the federal government contract with our local hospital to provide necessary services under a public health emergency declaration?

Answer by Rick Palagi - This question should be addressed to ATSDR. We were unable to contract to conduct the medical screening. The contract had to be awarded to the state.

CAG Member Question - What would St. John's Lutheran Hospital (SJLH) have to do to be able to handle a public health emergency? Is it a matter of staffing or equipment?

Answer by Rick Palagi - We can provide some treatment of asbestos-related disease, but we can't provide speciality services. Since we don't know the definition of a public health emergency or the criteria for declaring one, I can't answer the question of what SJLH would have to do.

CAG Member Question - Does the Superfund statute specify criteria that SJLH would have to meet to provide public health services under an emergency declaration?

Answer by Clinton Maynard - No. The language is broad enough so we can work within it.

CAG Member Question - Can we ask the EPA medical people about such criteria?

Answer by Jim Christiansen - EPA does not have medical people.

CAG Member Comment - We have been told at past CAG meetings that pursuant to the Superfund law, response to such a declaration is tied to public health hospitals.

CAG Member Comment - We are missing the boat if we don't pursue a public health emergency

declaration.

Audience Member Comment - One paragraph of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) references Public Health Hospitals, but another obligates the federal government to respond without reference to them. The relevant paragraphs are:

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry...The Administrator of said Agency shall, with the cooperation of...local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall—

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to... any other assistance appropriate under the circumstances; and

(E) ...In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

CAG Member Comment - Recent press reports indicate that the Office of Management and Budget (OMB) doesn't want a declaration of a public health emergency in Libby.

CAG Member Comment - We need the state or the county to designate an emergency to put pressure on the federal government to act.

CAG Member Question - What would happen tomorrow if the County Commissioners declared a public health emergency?

Answer by Commissioner Windom - The County cannot force the federal government to act. The declaration has to come from the federal government.

CAG Member Comment - Our focus should be on what health care is needed in Libby and how that care might be provided.

CAG Member Comment - Given the language in the Superfund statute, our primary effort should be to get a public health emergency declared. What is our plan to do so?

CAG Member Comment - I have asked an EPA attorney, Matt Cohn, two questions. What is the definition of a public health emergency and who can declare one. He answered that the statute does not contain a definition and that EPA has the authority to make the declaration. I suggest that our situation in Libby is the definition of a public health emergency. We have the legislation we need in the Superfund law.

CAG Member Question - When the OMB squashed EPA's proposal to declare a public health emergency, what was the issue?

Answer by Jim Christiansen - I do not know what went on in the OMB. When EPA discussed the declaration, we thought that it was the only way to remove the vermiculite insulation from

homes in Libby.

CAG Member Question - Would you support a declaration for Libby?

Answer by Jim Christiansen - I agree that if any situation warrants a declaration of a public health emergency, the situation in Libby does. However, a declaration will not immediately create money or public health hospitals.

CAG Member Question - Would preparation of our health care facilities strengthen our case for a declaration?

Answer by Jim Christiansen - I don't know.

CAG Member Question - What is the next step the community should take to get a public health emergency declaration?

Answer by Jim Christiansen - I don't know. It may help for the county to make such a declaration, but they may not have the legal authority to do so.

CAG Member Question - Can you lay out the steps for obtaining a declaration?

Answer by Jim Christiansen - No, but I will take this issue to the EPA Regional Administrator.

CAG Member Question - Has the fact that EPA has moved from emergency response to remediation closed the opportunity for an emergency health declaration?

Answer by Jim Christiansen - No, the stage of cleanup is not relevant to a declaration.

CAG Member Question - How can we fan the fire nationally to get a declaration of a public health emergency?

Answer by Gayla Benefield - I was on a New York City talk show program today. I said that this situation is deja vu because the same thing happened in 1982. We have the evidence, the science, and people with integrity in EPA, but the action got squashed. National outrage is spreading.

Audience Member Comment - This CAG is the community. I urge you to solve any individual concerns that so that you can speak with one voice. You have the power to get appropriate officials including our Congressional delegation to come to Libby and address this issue.

Audience Member Comment - The County Commissioners talk with Congressional staffers every week. It takes more than three Commissioners. It takes an energized community.

CAG Member Comment - Does the community want a declaration of a public health emergency? If it does we should send a letter to EPA, Montana's Congressional delegation and the media.

CAG Member Comment - The exposed people of Libby deserve an answer.

CAG Member Question - How do we determine public support? Should we hold a public meeting or conduct a survey?

CAG Member Comment - This CAG and the elected city and county officials can speak for the community.

CAG Member Comment - To apply pressure to the feds, we need to be unified and prepared to deliver health care services. We need to position our health care to bolster EPA if and when they declare a public health emergency.

CAG Member Question - Have we attempted to recruit a pulmonologist?

Answer - Dr. Whitehouse is here part time. We have not attempted to recruit a full time pulmonologist. The key, however, is the declaration of the public health emergency, not whether we have a full time pulmonary specialist.

CAG Member Comment - With the award of our environmental justice grant, the school system is tracking children who passed through our schools. So far we have identified 1,698 children who may have been exposed to asbestos. More people who have the disease will be identified. We need money so that our hospital can take of our health care needs.

CAG Member Comment - When EPA Administrator Whitman came to Libby, she promised that what happened here would not happen again. With the OMB squashing the emergency public health declaration, it is happening again.

CAG Member Comment - I am concerned that the "White Lung" program is being considered now in Washington DC, and it will be pushed on us and won't take care of our needs. We need to seek the declaration of the public health emergency and take our request to the media.

CAG Member Question - How should we go to the EPA with this request?

Answer by Jim Christiansen - Make the request now in terms of the need for health care, not insulation removal.

CAG Member Comment - We should make the point that our situation in Libby is unique because of our history of asbestos exposure.

CAG Action - Those members of the CAG present agreed unanimously to send a letter requesting a declaration of a public health emergency in Libby to Montana's Congressional delegation with copies to the EPA Regional Administrator and the media. They delegated Sandy Wagner to draft the letter with help from any other CAG member. A signature page was circulated to collect CAG member and audience member signatures to be included with the letter. Ms. Wagner will circulate the draft to the CAG and seek signature of CAG members not present at this meeting.

TAG Report

George Keck and Sandy Wagner reported on behalf of the Technical Advisory Committee (TAG). He stated that to date the TAG has secured its grant from EPA, incorporated with the state, applied for the non-profit 501(c)(3) designation from the Internal Revenue Service, and applied for the non-profit exemption from state taxes. Openings still exist on the TAG Board of Directors. Anyone wishing to apply can do so at P.O. Box 53, Libby, Montana, 59923. The TAG meets on the Tuesday of the same week as CAG meetings at 7:00 p.m. on the second floor of the First National Bank Building. The public is welcomed to attend. Ms. Wagner stated that the TAG has received the first set of technical documents for public review. A copy will be available at the EPA Information Center.

Public Comment

No additional public comment was made.

Next Meeting

The next meeting is scheduled for Thursday, February 13, 2003 at 7:00 p.m. in the Ponderosa Room of Libby City Hall.

Appendix 1
CAG Member & Guest Attendance List
January 9, 2003

Members	Group/Organization Represented
	Sandy Wagner Community Health Center
	George Keck Technical Advisory Group
	Don Wilkins Lumber & Sawmill Workers
	Rick Palagi St. John's Lutheran Hospital
K.W. Maki	Libby Schools
	Ken Hays Senior Citizens
	Wendy Thomi EPA Community Involvement Coordinator
	Jim Christiansen EPA
	David F. Latham <i>The Montanian Newspaper</i>
	Rick Flesher Asbestos Victim
Gordon Sullivan	Self
	Gayla Benefield LCAVRO
	LeRoy Thom Former Grace Employee
	Gary D. Swenson Libby Fire Department
Eileen Carney	State Representative
	Clinton Maynard Area Asbestos Research Group
	Norita Skramstad Asbestos Victim